

UNITED STATES OF AMERICA,) Case No. 20-00183-01-CR-W-GAF
)
 Plaintiff,) Kansas City, Missouri
) December 7, 2020
 v.)
)
 DUSTIN M. JORDAN,)
)
 Defendant.)
)

APPEARANCES:

For the Plaintiff: Mr. David Luna
Assistant United States Attorney
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For the Defendant: Mr. W. Scott Toth
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1 (Court in Session at 1:40 p.m.)

2 THE COURT: All right. Thank you so much, Traci. We
3 are here on Case No. 20-00183-01-CR-W-GAF, *United States of*
4 *America vs. Dustin Jordan*. May I please have entry of appearance
5 by the Government?

6 MR. LUNA: Good afternoon, Your Honor. This is David
7 Luna for the United States.

8 THE COURT: Thank you, Mr. Luna. And for Mr. Jordan?

9 MR. TOTH: Good afternoon and may it please the Court,
10 Your Honor? Mr. Jordan appears by Zoom video and along with his
11 attorney, Scott Toth.

12 THE COURT: All right. Thank you. All right. And so,
13 we are here for a change of plea hearing. And the first order I
14 need to cover is that I have a consent to entry of felony plea
15 before a U.S. Magistrate Judge form, and it appears to be signed
16 by Mr. Jordan and his attorney, Mr. Toth, dated with the date of
17 December the 5th of 2020. I'll ask you, Mr. Toth -- excuse me --
18 Mr. Jordan, did you sign that document?

19 MR. JORDAN: Yes, I did, Your Honor.

20 THE COURT: All right. And did you sign it after you
21 had a chance to talk with your attorney?

22 MR. JORDAN: Yes, I have, Your Honor.

23 THE COURT: And if you had any questions, did he answer
24 any questions that you had?

25 MR. JORDAN: Yes, he has, Your Honor.

1 THE COURT: All right. And in this consent form, what
2 it says is that I will be able to take your guilty plea as a
3 Magistrate Judge under a local rule that allows that. And then I
4 will prepare a Report and Recommendation to the District Judge
5 for the final adjudication. Do you understand that?

6 MR. JORDAN: Yes, I do, Your Honor. Thank you.

7 THE COURT: All right. So, did you sign this form
8 voluntarily and knowingly?

9 MR. JORDAN: Completely voluntarily and knowingly, yes.

10 THE COURT: All right. So, the Court does find that
11 this -- can't see it -- order. And so, it will be filed with the
12 Court. And so, we will move forward with the -- with this plea.
13 So, the Court has been advised, Mr. Jordan, that you wish to
14 enter a plea to the one-count Indictment that charges you with
15 being a felon in possession of a firearm, is that correct?

16 MR. JORDAN: That is correct, Your Honor.

17 THE COURT: All right. So, I need to ask you some
18 questions under oath. I will ask my courtroom deputy to swear
19 you in, and then we'll get started.

20 DUSTIN M. JORDAN, DEFENDANT, SWORN

21 THE COURT: All right. So, Mr. Jordan, do you
22 understand that you are now under oath, and that if you answer
23 any of my questions falsely, that you may later be charged and
24 prosecuted for perjury or making a false statement? Do you
25 understand that?

1 MR. JORDAN: I do understand that, Your Honor.

2 THE COURT: All right. All right. So, the first set of
3 questions I have for you have to deal with your competency to
4 understand these proceedings and enter a knowing plea. So, we'll
5 get started on that. What is your full name for the record?

6 MR. JORDAN: Dustin Michael Jordan.

7 THE COURT: And where were you born?

8 MR. JORDAN: Olean, New York.

9 THE COURT: New York. And how old are you?

10 MR. JORDAN: I am 38 -- 36. I'm sorry, Your Honor.

11 THE COURT: Okay.

12 MR. JORDAN: My brother just had his 30th birthday.

13 THE COURT: Okay. So, you're 38 -- 36 years old. How
14 far did you go in school?

15 MR. JORDAN: What's that?

16 THE COURT: How far did you go in school?

17 MR. JORDAN: Eleventh grade and then GED.

18 THE COURT: Okay. GED. So, are you able to read, write
19 and understand the English language?

20 MR. JORDAN: Very confidently.

21 THE COURT: All right. Have you been treated recently
22 for any mental illness or addiction to any drugs of any kind?

23 MR. JORDAN: Methamphetamines and bipolar.

24 THE COURT: And bipolar? I'm sorry.

25 MR. JORDAN: Bipolar, manic, Phase I episodes.

1 THE COURT: So, are you taking medication for that?

2 MR. JORDAN: Since my release from DOC, I have not been
3 able to get back on medication with a stable doctor. It's one of
4 my (inaudible) I'm trying to get to right now.

5 THE COURT: All right. So, without that medication, do
6 you still understand what's going on today?

7 MR. JORDAN: Yes, ma'am.

8 THE COURT: All right. So, I guess the question that --
9 you are currently under the care of a physician or psychiatrist,
10 is that correct?

11 MR. JORDAN: Not at this time, no.

12 THE COURT: Okay. But they're working on that, is that
13 correct?

14 MR. JORDAN: Nobody here is.

15 THE COURT: Okay. But that's the whole -- so you can
16 get back on whatever medications that you need for --

17 MR. JORDAN: That's the intention.

18 THE COURT: -- bipolar and manic depression? Okay. All
19 right. Are you currently under the influence of any drugs,
20 medication or alcoholic beverage of any kind?

21 MR. JORDAN: No, ma'am.

22 THE COURT: And are you fully aware of what's happening
23 here today?

24 MR. JORDAN: Yes, ma'am.

25 THE COURT: All right. I'll ask either counsel, do you

1 have any doubt as to Mr. Jordan's competency to plead at this
2 time? Mr. Toth?

3 MR. TOTH: No, Your Honor.

4 THE COURT: Okay. Mr. Luna?

5 MR. LUNA: No, Your Honor.

6 THE COURT: All right. Based upon Mr. Jordan's answers
7 to the questions, as well as the input from both counsel, this
8 Court does find that Mr. Jordan is competent to understand the
9 proceedings and enter a knowing plea. All right. So, these next
10 questions have to do with your satisfaction with your attorney,
11 Mr. Jordan. Have you had an ample opportunity to discuss your
12 case with your attorney?

13 MR. JORDAN: Yes, ma'am.

14 THE COURT: And are you fully satisfied with his
15 counsel, representation and advice in this case?

16 MR. JORDAN: Fully.

17 THE COURT: Okay. And has he done everything that
18 you've asked him to do?

19 MR. JORDAN: Everything and more, Your Honor.

20 THE COURT: Okay. All right. That's good. All right.
21 So, let's move on to there are certain rights that you are
22 waiving, constitutional rights that you are waiving by pleading
23 guilty. And no one can force you to plead guilty, not the Court,
24 not your attorney, not the Government, not law enforcement. No
25 one can force you to waive your constitutional right to a jury

1 trial on these charges. And this case will proceed to trial as
2 scheduled, unless you enter a guilty plea today. Do you
3 understand that?

4 MR. JORDAN: Yes, I do, Your Honor.

5 THE COURT: All right. So, as far as your
6 constitutional rights that you are waiving, you're waiving the
7 right to plead not guilty and to persist in a plea of not guilty.
8 Do you understand that?

9 MR. JORDAN: Say it one more time.

10 THE COURT: You're waiving the right to plead not guilty
11 and to persist in a plea of not guilty. Do you understand that?

12 MR. JORDAN: Yes, ma'am.

13 THE COURT: You're also waiving the right to be presumed
14 innocent until your guilt is established beyond a reasonable
15 doubt at trial because there won't be a trial. Do you understand
16 that?

17 MR. JORDAN: Yes, ma'am.

18 THE COURT: Additionally, you have, you're waiving the
19 right to a jury trial, and at that trial, the right to effective
20 assistance of counsel. Do you understand that?

21 MR. JORDAN: Yes, ma'am.

22 THE COURT: Also, you are waiving the right to confront
23 and cross-examine witnesses that the Government would have to
24 testify against you at trial because there won't be a trial. Do
25 you understand that?

1 MR. JORDAN: Yes, ma'am.

2 THE COURT: Additionally, you would be waiving the right
3 to compel or subpoena witnesses to appear on your behalf at trial
4 because there won't be one. Do you understand that?

5 MR. JORDAN: Yes, ma'am.

6 THE COURT: And additionally, you are waiving the right
7 to remain silent at trial, in which case, your silence could not
8 be used against you. Do you understand that?

9 MR. JORDAN: Yes, ma'am.

10 THE COURT: And have you discussed your rights with your
11 attorney?

12 MR. JORDAN: I have.

13 THE COURT: Okay. And with knowing all those rights
14 that you are waiving, do you still wish to plead guilty?

15 MR. JORDAN: I do, Your Honor.

16 THE COURT: All right. So, do you have a copy of the
17 Indictment with you, Mr. Jordan?

18 MR. JORDAN: No, I do not, ma'am.

19 THE COURT: Okay. But you've had a chance to review
20 that with your attorney, is that correct?

21 MR. JORDAN: Yes, ma'am.

22 THE COURT: All right. And so, what I will do, I will
23 have Mr. Luna read the Indictment to you. It's one count. And
24 then also provide you with the penalties that are associated with
25 the charges. Okay?

1 MR. JORDAN: Yes, ma'am.

2 THE COURT: All right. Mr. Luna.

3 MR. LUNA: The defendant is indicted in a single count
4 of felon in possession of a firearm. It alleges that on or about
5 July 24th, 2020, in the Western District of Missouri, the
6 defendant, knowing he had been previously convicted of a crime
7 punishable by imprisonment for a term exceeding one year, did
8 knowingly possess, in and affecting commerce, a firearm, to wit:
9 a Phoenix Arms, Model HP22A, .22 long rifle caliber, semi-
10 automatic pistol, Serial Number 4358311, which had been
11 transported in interstate commerce, contrary to Title 18, United
12 States Code, Sections 922(g)(1) and 924(a)(2). Felon in
13 possession of firearm as charged is punishable by not more than
14 ten years imprisonment, not more than a \$250,000 fine, up to
15 three years of supervised release, and that is a Class C felony.
16 There is also a \$100 mandatory special assessment for that count.

17 THE COURT: Thank you. All right. Mr. Jordan, do you
18 understand the charges that are lodged against you?

19 MR. JORDAN: Yes, ma'am, Your Honor.

20 THE COURT: All right. And let's see. Do you also
21 fully understand the penalties that are associated with the
22 charge?

23 MR. JORDAN: Yes, Your Honor.

24 THE COURT: All right. Mr. Luna also indicated about
25 the \$100 mandatory special assessment. And do you understand

1 that that \$100 is mandatory under the statute 18 U.S.C. Section
2 3013, and that you're responsible for paying that \$100? Do you
3 understand that?

4 MR. JORDAN: Yes, Your Honor.

5 THE COURT: Also, he talked about the period of
6 supervised release of not more than three years. Do you
7 understand that if you're on supervised release and you violate
8 the terms, the court revoke your supervised release? Can you
9 still hear me?

10 MR. JORDAN: I can barely hear you over these guys. I'm
11 sorry, Your Honor.

12 THE COURT: Okay. That's okay.

13 MR. JORDAN: (Inaudible).

14 THE COURT: All right. Thank you. Okay.

15 MR. JORDAN: They want it open.

16 THE COURT: All right. So, we were talking about the
17 penalties. In the Indictment it has not more than three years of
18 supervised release. Do you know what supervised release is?

19 MR. JORDAN: Yes, ma'am, probation.

20 THE COURT: All right. So, similar to that.

21 MR. JORDAN: It's similar, yes.

22 THE COURT: So, after the period of custody, then you
23 would be on paper, as they say, for not more than three years.
24 Do you understand that?

25 MR. JORDAN: I do, Your Honor. Thank you.

1 THE COURT: So, if you're on supervised release and you
2 violated those -- violate those terms, the court can revoke your
3 supervised release, send you back to jail, and not give you any
4 credit for any time that you'd spent on supervised release. Do
5 you understand that?

6 MR. JORDAN: I do, Your Honor.

7 THE COURT: And also, the court can add an additional
8 time of supervised release even after that is done. Do you
9 understand that?

10 MR. JORDAN: Yes, Your Honor.

11 THE COURT: All right. All right. So, I understand
12 that there is no plea agreement in this case, is that correct?

13 MR. LUNA: That's correct, Your Honor.

14 THE COURT: Okay. All right. So, let me go over -- I
15 guess I want to confirm with Mr. Toth that any -- I don't know if
16 there have been any formal plea offers, but I just wanted to
17 confirm that any -- if there were any, that they were conveyed to
18 your client, Mr. Jordan?

19 MR. TOTH: There really hasn't, Your Honor, to be honest
20 with you. But anything that Mr. Luna and I have communicated
21 about has been passed on to Mr. Jordan. And I'm satisfied that
22 he has all the information that I have received from the
23 Government.

24 THE COURT: All right. Thank you. All right. All
25 right. So, Mr. Jordan, this offense, of course, is a felony

1 offense, and if your plea is accepted and you are adjudged
2 guilty, there are certain civil rights that you are waiving. Do
3 you understand that?

4 MR. JORDAN: Yes, ma'am.

5 THE COURT: Okay. So, I'm going to go over those civil
6 rights that you would be losing. That is the right to vote, the
7 right to hold public office, the right to a jury, and the right
8 to possess any kind of firearm and ammunition. Do you understand
9 that those are the civil rights that you would lose?

10 MR. JORDAN: Yes, ma'am.

11 THE COURT: All right. And I'm sure Mr. Toth has talked
12 to you about the Sentencing Guidelines. Have you talked about
13 that?

14 MR. JORDAN: Yes, ma'am.

15 THE COURT: All right. And so, I know that he may have
16 talked to you about maybe some calculations that he thinks will
17 be -- about the guideline range that may be calculated in this
18 case. Do you understand that those guidelines or those
19 calculations by your attorney and the Government just simply,
20 they're estimates? Do you understand that?

21 MR. JORDAN: Yes, ma'am.

22 THE COURT: Do you also understand that the District
23 Judge will be the one who will determine what your guideline
24 range is and also what sentence is ultimately imposed in this
25 case? Do you understand that?

1 MR. JORDAN: Yes, ma'am.

2 THE COURT: And that sentence can be, could be more or
3 less than what your attorney and the Government have predicted in
4 this case. Do you understand that?

5 MR. JORDAN: I do, Your Honor.

6 THE COURT: And the District Judge will go over a lot of
7 information about you, about the offense that will give -- Judge
8 Fenner -- which will give Judge Fenner the information to impose
9 a sentence that is reasonable, based upon the facts of this case.
10 Do you understand that?

11 MR. JORDAN: Yes, Your Honor.

12 THE COURT: So, the court will be looking at what we
13 call the sentencing factors. That's under 18 U.S.C. Section
14 3553(a). It looks at the need to deter, to protect the public,
15 to impose a sentence that is similar to others in a similar
16 situation. Do you understand that?

17 MR. JORDAN: Yes, Your Honor.

18 THE COURT: Okay. All right. And I know in state court
19 they have what they call parole. But you understand that there
20 is no parole in federal court?

21 MR. JORDAN: Yes, Your Honor.

22 THE COURT: All right. And since you don't have a plea
23 agreement that you are reserving your right to appeal certain
24 things, I don't know if you talked about your (inaudible) with
25 your attorney, but you are reserving the right to appeal your

1 sentence and (inaudible). Do you understand that?

2 MR. JORDAN: Yes, Your Honor.

3 THE COURT: All right. All right. Let's go on to the
4 factual basis in this case. Mr. Luna, could you please provide
5 the Court with the evidence that the Government would present had
6 this case gone to trial?

7 MR. LUNA: Yes, Your Honor. I anticipate that if this
8 case went to trial, the Government would be able to prove that on
9 July 24th, 2020, at 2:30 p.m., a Kansas City, Missouri Police
10 officer was working in off-duty capacity at the Walmart located
11 on 40 Highway in Kansas City, Jackson County, Missouri, which is
12 in the Western District of Missouri. The responding officer was
13 notified by Walmart Asset Protection personnel that a subject,
14 later identified as the defendant, had taken a flashlight off of
15 one of the shelves, ripped off a tag -- a price tag and concealed
16 the flashlight in his front pants pocket as he walked toward the
17 front of the store. The defendant was stopped as he passed
18 through the checkout area without paying for the flashlight. The
19 stolen flashlight was retrieved from the defendant's pants pocket
20 by the responding officer. A computer check was then conducted,
21 and it was revealed that the defendant had a felony Missouri
22 parole violation warrant and several Jackson County municipal
23 warrants as well. The defendant was placed under arrest for his
24 warrants and for the stealing. A search incident to arrest of
25 the defendant's person revealed a black pouch attached to the

1 front of his pants. As the responding officer removed the pouch,
2 he felt a weapon inside, and the defendant made a statement
3 acknowledging that there was a firearm inside the pouch. The
4 responding officer removed the gun from the pouch and determined
5 it was unloaded. The handgun was identified as a Phoenix Arms,
6 Model HP22A, .22 long rifle caliber handgun, with Serial Number
7 4358311. The firearm was viewed by a special agent with ATF, who
8 is a nexus expert, and he was able to determine that the firearm
9 was not manufactured in the state of Missouri and, thus, had
10 traveled in interstate commerce. The Government would also be
11 able to prove the defendant's prior felony convictions and his
12 knowledge of his felon status by offering certified copies of his
13 convictions. Specifically, the defendant was convicted in Cause
14 Number 07AOCR01304-01 out of Jasper County. It was a conviction
15 for the Class C felony of theft on November 19th of 2007. The
16 defendant received initially a suspended three-year sentence in
17 that case. However, his probation was subsequently revoked, and
18 he was sentenced to a sentence to serve that term of imprisonment
19 was executed. So, he served a three-year sentence in that case.
20 January 25th of 2016, in Jackson County -- excuse me -- in Jasper
21 County, the defendant was convicted of three cases
22 simultaneously, 15AOCR00254-01, for the Class C felony of
23 receiving stolen property; in Case Number 15AOCR00793-01, for the
24 felony of stealing; and, in case number 15AOCR01426-01, for the
25 Class C felony of burglary in the second degree. And in each of

1 these cases, the defendant was sentenced to concurrent five-year
2 sentences under the Missouri Department of Corrections' long-term
3 drug treatment program. Upon successful completion of the
4 program, he was subsequently placed on two-year terms of his
5 probation. However, his probations were subsequently revoked,
6 and the sentences were imposed in all three of those cases.
7 That's all I have, Your Honor.

8 THE COURT: All right. Thank you. Okay. Mr. Toth, do
9 you agree that that would be the Government's evidence in this
10 case?

11 MR. TOTH: Yes, Your Honor, it's all true.

12 THE COURT: All right. And, Mr. Jordan, do you agree
13 with the Government's summary of what occurred?

14 MR. JORDAN: I do, Your Honor.

15 THE COURT: All right. And did you do what the
16 Government said that you did?

17 MR. JORDAN: I did.

18 THE COURT: Okay. And I'll just ask, Mr. Toth, if you
19 could just make a factual basis on the elements of this
20 Indictment with Mr. Jordan?

21 MR. TOTH: I guess I -- I'm sorry, Your Honor. I don't
22 quite understand the question.

23 THE COURT: If you'll make a factual basis with Mr.
24 Jordan on these charges?

25 MR. TOTH: Did I make a factual basis?

1 THE COURT: No, will you. I want you to do one now.

2 MR. TOTH: Oh, okay. Your Honor, yes. On July 24th,
3 2020, Mr. Jordan did go into the Walmart store in Western
4 District of Missouri. He did --

5 THE COURT: Well, do you want to ask him the questions?
6 Do the colloquy.

7 MR. TOTH: Justin?

8 MR. JORDAN: Yes.

9 MR. TOTH: Thank you, Your Honor. Now, I'm tracking.
10 I'm so sorry. Justin, did you hear this factual basis given by
11 Mr. Luna, the Government's attorney?

12 MR. JORDAN: I did, Your Honor. I did, Mr. Toth.
13 Sorry.

14 MR. TOTH: Okay. And, Justin, we have gone over the
15 facts of the case together, correct?

16 MR. JORDAN: Yes, we have.

17 MR. TOTH: And did the factual basis given by Mr. Luna,
18 is that accurate and correct?

19 MR. JORDAN: Yes, it is.

20 MR. TOTH: Okay. And in fact, are you pleading guilty
21 to being a felon in possession of a firearm because you were a
22 felon in possession of a firearm when you were arrested on July
23 24th?

24 MR. JORDAN: Yes, and I was.

25 MR. TOTH: Your Honor, is there anything else you would

1 like from me on that?

2 THE COURT: No, I'll just ask him just a couple follow-
3 up questions. I just want to make sure the record is clear. So,
4 Mr. Jordan, on July 24th of 2020, here in the Western District of
5 Missouri, did you know that you were already previously convicted
6 as a felony?

7 MR. JORDAN: Yes, ma'am, I was.

8 THE COURT: And at that time, on July 24th of 2020, did
9 you knowingly possess a firearm, the one that is listed in the
10 Indictment, the Phoenix Arms, semi-automatic pistol with that
11 serial number?

12 MR. JORDAN: Yes, ma'am.

13 THE COURT: And do you agree that the Government would
14 present evidence that that firearm was not manufactured in
15 Missouri, therefore, it had to be transported in interstate
16 commerce? Do you agree with that?

17 MR. JORDAN: Yes, ma'am.

18 THE COURT: Okay. All right. I think that's
19 sufficient. All right. Mr. Jordan, has anyone attempted in any
20 way to force you to plead guilty or otherwise threaten you?

21 MR. JORDAN: No, ma'am.

22 THE COURT: And has anyone made any promises or
23 assurances of any kind to get you to plead guilty today?

24 MR. JORDAN: No, Your Honor.

25 THE COURT: And are you pleading guilty because you are,

1 in fact, guilty?

2 MR. JORDAN: Guilty is guilty, yes.

3 THE COURT: And are you doing this of your own free
4 will?

5 MR. JORDAN: I am, Your Honor.

6 THE COURT: So, I will specifically ask you, Mr. Jordan,
7 as to this one-count Indictment that was returned in the Western
8 District of Missouri on August the 25th of 2020, how do you
9 plead, guilty or not guilty with being a felon in possession of a
10 firearm?

11 MR. JORDAN: I plead guilty, Your Honor.

12 THE COURT: All right. All right. The Court does find
13 that there is indeed a factual basis for the plea of guilty, and
14 that you, Mr. Jordan, since you acknowledge that you are, in
15 fact, guilty as charged in the Indictment, and since you know
16 your rights to a trial by jury, you are aware of (dogs barking).

17 MR. HABIGER: Sorry.

18 THE COURT: And since you are knowingly and
19 intentionally pleading guilty, the Court will accept your guilty
20 plea. All right. And so, a Presentence Investigation Report
21 will be prepared. Also, this Court will prepare a Report and
22 Recommendation to Judge Fenner recommending the judgment of the
23 plea of guilty. With the -- I think we have Probation on, Mr.
24 Habiger is on, and he will prepare the report. You will have a
25 chance to look at that report. Your attorney will review it.

1 The Government will review it. If you have any changes or
2 corrections, you'll have a chance to do that. (Phone ringing).
3 Okay. If you all cannot resolve any changes or corrections,
4 Judge Fenner will make the ultimate determination as to what
5 should be in that report. Do you understand that?

6 MR. JORDAN: Yes.

7 THE COURT: All right. All right. Do you have any
8 questions about anything that we've gone over today, Mr. Jordan?

9 MR. JORDAN: Not that I'm aware of, Your Honor.

10 THE COURT: Okay. All right. I am going proceed to
11 cover -- you will continue to be -- you're at Caldwell County?

12 MR. JORDAN: Yes, ma'am.

13 THE COURT: So, you'll remain there, and I think that's
14 all we need to cover. Mr. Luna, anything else?

15 MR. LUNA: No, Your Honor. Thank you.

16 THE COURT: Okay. Mr. Toth, anything you can think of?

17 MR. TOTH: No, thank you, Your Honor.

18 THE COURT: Okay. My staff, anything that I've
19 forgotten? Okay. All right. So, we will be in recess. Thank
20 you, all. Please continue to be safe and be healthy.

21 MR. LUNA: Thank you.

22 MR. JORDAN: You too, Your Honor.

23 MR. TOTH: Thank you.

24 MR. JORDAN: Thank you.

25 (Court Adjourned at 2:06 p.m.)

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5
6 I certify that the foregoing is a correct transcript
7 from the electronic sound recording of the proceeding in the
8 above-entitled matter.

9
10 /s/ Lissa C. Whittaker
Signature of transcriber

December 10, 2020
Date